

PD-0395-20

NICOLE P. SELECTMAN

§

IN THE COURT OF

FILED

COURT OF CRIMINAL APPEALS

3/8/2021

DEANA WILLIAMSON, CLERK

VS.

§

CRIMINAL APPEALS

§

STATE OF TEXAS

§

OF TEXAS

**MOTION TO EXTEND TIME TO FILE APPELLANT'S REPLY BRIEF**

TO THE HONORABLE COURT OF CRIMINAL APPEALS OF TEXAS:

COMES NOW, appellant, NICOLE P. SELECTMAN, who, by and through the undersigned counsel of record, and pursuant to T.R.A.P. 10.5(b), does hereby respectfully move this Court to extend the time to file appellant's reply brief, and in support would show this Honorable Court the following:

**I. Procedural History.**

After an initial jury hung eleven [11] to one [1] in favor of acquittal, appellant was later convicted on June 14, 2018 of causing serious bodily injury to a dating, household, or family member. Following the instant punishment verdict, the trial court imposed sentence at ten [10] years' imprisonment and a zero-dollar [\$0.00] fine. Appellant timely filed notice of appeal on August 6, 2018. All briefs were timely filed by June 23, 2019.

The court of appeals filed a memorandum opinion affirming appellant's conviction and sentence on March 25, 2020. Appellant's motion for *en banc*

reconsideration was denied on May 22, 2020. This Honorable Court granted discretionary review on November 25, 2020. Appellant filed her initial brief in this Court on January 12, 2021 and the State filed its response on February 11, 2021.

## **II. Deadline for Filing Appellant's Reply Brief.**

Reply briefs are typically due within twenty [20] days after a responsive brief is filed. TEX. R. APP. P. 38.3; 38.6(c). Here, that date would have been March 3, 2021. That said, given permission from this Court is needed to file any reply brief, no specific deadlines would appear to apply to a reply brief, or to a motion to extend the time to file such a brief. *See* TEX. R. APP. P. 70.4 (containing no deadlines to file “other briefs” requested by either this Court or “upon motion of a party”). The only prerequisite needed to file such brief appears to be Court’s permission, or direction, itself.

On this date, appellant has, at once, filed both a motion requesting leave of this Court to file a reply for appellant and a this motion for extension. The latter filing is added at the behest of the clerk of this Court and out of an abundance of caution. *See also* TEX. R. APP. P 38.6(d) (providing, “[a] motion to extend the time to file a brief may be filed before or after the date the brief is due”).

## **III. Length of Extension Sought.**

Appellant seeks an extension of twelve [12] days, until Monday, March 15, 2021 to file appellant’s reply brief.

#### **IV. Facts Relied on To Support An Extension.**

Counsel received no notice of the response the State filed in this Court on February 11, 2021, by e-mail or otherwise.<sup>1</sup> The only notice counsel has ever received of that filing was e-mailed by this Court on February 12, 2021, but did not arrive until 7:01 p.m., by which time counsel had already left work for the day.<sup>2</sup>

During the next week, Counsel's office — like all Bexar County offices — was closed due to either the President's Day holiday or because local roads were rendered impassable by historically inclement weather, including up to five [5] inches of snow near counsel's residence. Counsel had no access to his office or work e-mail during that entire week. Counsel therefore did not learn of the State's responsive filing until Bexar County offices re-opened on Monday, February 22, 2021. By that time, twelve [12] of the twenty [20] days normally allotted for a reply period had already expired. *See* TEX. R. APP. P. 38.6(c) (allowing twenty [20] days to file a reply brief in a court of appeals).

Upon discovering the Court's e-mail, counsel downloaded the State's response from this Court's website and has started reviewing carefully the cases cited therein, but additional time is needed to craft a suitable reply. Given the

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<sup>1</sup> *See* Appendix A (containing screenshot showing all e-mails counsel received on February 11, 2021, none of which notified appellant of the State's responsive brief).

<sup>2</sup> *See* Appendix B (containing timed and dated copy of this Court's e-mail first notifying counsel of State's responsive filing).

untimely notice provided by the State, length of time counsel was without access to his work e-mail due to inclement weather, and fact that oral argument is not likely to be granted here, the extension requested here is particularly important.

**V. Number of Previous Extensions Granted.**

No other extension of time to file appellant's reply brief will be requested.

**VI. Prayer.**

WHEREFORE, PREMISES CONSIDERED, appellant hereby respectfully requests that this Court both grant leave to file appellant's reply brief in this case, and extend the time to file that reply until Monday, March 15, 2021.

Respectfully submitted,

*Dean A. Diachin*

DEAN A. DIACHIN

Bexar County Assistant Public Defender

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ATTORNEY FOR APPELLANT.

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing motion to extend time to file appellant's brief has been electronically served on the Bexar County District Attorney's Office, Appellate Division, Paul Elizondo Tower, 101 W. Nueva St., Suite 710, San Antonio, Texas 78205, on March 5, 2021.

*Dean A. Diachin*

DEAN A. DIACHIN

Bexar County Assistant Public Defender.

# Appendix A.

**Screenshot Detailing All E-mails**  
**Counsel Received On:**

**February 11, 2021.**

Items: 5,128   Unread: 60    Reminders: 1

# Appendix B.

**E-mail Notice**  
**From Clerk of this Court**  
**Delivered On:**

**February 12, 2021 @ 7:01 p.m.**



## Diachin, Dean

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**From:** noreply@txcourts.gov  
**Sent:** Friday, February 12, 2021 7:01 PM  
**To:** Diachin, Dean  
**Subject:** Case Notices for: PD-0395-20  
**Attachments:** PD-0395-20\_BRIEF FIELD\_\_FILECOPYY.pdf

### NOTICE:

This email originated from an EXTERNAL email address outside of bexar.org. Please use caution when clicking links or opening attachments from email senders that you do not know.

If you feel it is suspicious, please send this email as an attachment to [BCERT@bexar.org](mailto:BCERT@bexar.org)

Notice(s) for the following case(s) are attached:

- COA # PD-0395-20 / TC # 2015CR9689 (1)

1. BRIEF FIELD\_\_FILECOPYY.pdf

Thank you,  
Deana Williamson, Clerk  
Court of Criminal Appeals

Do not reply to this message. If you have questions, please contact the Court at (512) 463-1551.

[NoticeBatchID: f5d03c17-ad7c-4778-92b1-e146a81449a7]

COURT OF CRIMINAL APPEALS

### **Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Dean Diachin on behalf of Dean Diachin  
Bar No. 796464  
Dean.Diachin@Bexar.org  
Envelope ID: 51204425  
Status as of 3/8/2021 9:12 AM CST

Associated Case Party: NicolePatriceSelectman

Name	BarNumber	Email	TimestampSubmitted	Status
Dean AndrewDiachin		dean.diachin@bexar.org	3/5/2021 2:02:19 PM	SENT

Associated Case Party: State of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Shameka A.Roberts		shameka.roberts@bexar.org	3/5/2021 2:02:19 PM	SENT
Laura Durbin		laura.durbin@bexar.org	3/5/2021 2:02:19 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Stacey Soule		information@spa.texas.gov	3/5/2021 2:02:19 PM	SENT